[Sri R. Suryanarayana Rao] [22nd April 1948

along with the other sections of the Act. I feel nervous to vote on any of these amendments without having proper opportunity of studying them. They run to seven pages and we received them only yesterday. After all, Sir, there is no urgency to have this amendment passed to-day; I suggest it can be taken up some other day so as to enable us to read through the pages and examine the rules. I do not know if the Schedules were published in the *Fort St. George Gazette* to enable the Municipal Councils and local bodies to express their views. That apart—perhaps that is a matter which under the statute they will have to do—so far as we are concerned, a little more time is necessary for us to study the schedules and the amendments proposed. I am sure even the Hon. Minister for Local Administration agrees that they are not so simple or innocuous as he would like us to treat them. I suggest that they may be taken up after we finish discussion of Bills tomorrow."

MR. PRESIDENT :—" This has to be finished before the end of the month; 25th April happens to be Sunday and the other House is meeting on the 26th."

SRI R. SURYANARAYANA RAO :—" Tomorrow these bills may not take much time."

THE HON. SRI K. CHANDRAMOULI :—" I do not mind; I have no objection."

MR. PRESIDENT :—" The Government motions will be taken up tomorrow."

IV.—GOVERNMENT BILLS—*cont.*

(5) THE MADRAS SALES OF MOTOR SPIRIT TAXATION (AMENDMENT) BILL, 1948 (L.A. BILL NO. 16 OF 1948).

THE HON. SRI B. GOPALA REDDI :—" Mr. President, I move—

> '*that the Madras Sales of Motor Spirit Taxation (Amendment) Bill*, 1948 (*L.A. Bill No.* 16 *of* 1948)[a] *as passed by the Legislative Assembly be taken into consideration.*'

" Sir, this is not a taxation measure and hon. Members need not be afraid that we are going to levy a tax on petroleum but this is a Bill which brings it on a par with the General Sales Tax Act. There is only one little point of a controversial nature, namely, the wording ' tax due ', we change into ' tax assessed ' and that matter also was accepted by this House when the General Sales Tax was before the House which is that criminal courts need not go into the question whether a tax is due or not. The others are non-controversial matters and they are of no consequence. Instead of the Commissioner of Commercial Taxes, we put in Deputy Commissioner and things like that. I request that the Bill may be taken into consideration."

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[a] Printed as Appendix V on page 211 infra.

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SRI B. NARAYANASWAMI NAYUDU :—" Mr. President, it is not so small as the Hon. Minister thinks. At present, when a demand is made, the assessee says : 'This is only due from me and I can only pay this ' and the matter would go before a criminal court and the magistrate will hold an enquiry and definitely fix the amount due. Now this is all taken away and he has to pay the tax demanded from him. Certainly this is a question of taking away the jurisdiction of a criminal court and saying to the unfortunate assessee : 'You must pay what is demanded; otherwise, you will be sent to jail.' It must be remembered, Sir, that there is always the conflict between the assessee and the assessing authority and I ask why the present jurisdiction of the criminal courts is taken away. By this you are really clothing the assessing authority with enormous powers. What is the trouble under the present arrangements and why is this sought to be changed? Evidently some magistrates said that so much amounts were not due and what was due was something less. I wish to know from the Hon. Minister how many magistrates have held like that and said that the amount demanded was in excess of what was actually due. How do they feel that such judgments were wrong and why do you want to take away such powers from the magistrates? Why do you think of infringing and encroaching upon the powers of the judiciary which you have appointed; do you suspect your magistrates or are they incapable of deciding correctly what is the amount actually due. I am afraid that on principle this must be opposed."

DR. V. K. JOHN :—" Mr. President, Sir, this is a very very objectionable Bill. It makes the magistrate a tax-collector. A person can be convicted for failure to pay any tax demanded from him, but he is not given an opportunity to dispute the amount of tax to which he has been assessed. 'The magistrate shall specify in the judgment the amount of the tax which the person convicted has failed or evaded to pay and the amount so specified shall be recoverable as if it were a fine.' It is very wrong to make the magistrate a tax-collector. Have not the Executive Government power and facility to collect tax from a person who has failed or evaded to pay it? Why should there be a provision that the magistrate shall collect the tax as if it were a fine? I object to the principle underlying the Bill as it interferes with the liberty of a subject who is charged that he has failed or evaded to pay the tax." 4-30 p.m.

THE HON. SRI B. GOPALA REDDI :—" Mr. President, Sir, we are not doing anything extraordinary; we are only amending this Act to bring it in line with the Madras General Sales Tax Act and the Madras District Municipalities and Local Boards Acts. Whether a person is duly assessed or not is not for the criminal court to say. It is a matter for the civil court and an aggrieved person can certainly challenge the assessment in a civil court. On the other hand, when a defaulter is taken to a criminal court, it is not for him at that stage to dispute the amount of the tax.

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Besides, we are providing for the constitution of a Tribunal to hear cases arising under the General Sales Tax Act, the Acts relating to Commercial Taxes, etc. Certainly he can go to the tribunal and challenge the assessment. The criminal court is not the proper forum for it. As I said, we are only amending the Act so as to bring it in line with the General Sales Tax and the District Municipalities and Local Boards Acts. So I request that the motion may be adopted."

The motion was put and carried.

Clause 2.

SRI B. NARAYANASWAMI NAYUDU :—" Sir, my friend the Hon. Finance Minister does not want a person to challenge the assessment in a criminal court. The amount of assessment, whether it is ten rupees, twenty rupees or thirty rupees, is the question. Suppose, I am liable to pay a tax of only ten rupees and more is demanded from me. I am prevented from saying to the magistrate that I am liable to pay only so much. Then, there is the method of collecting the tax. You want to make the magistrate a Police officer in order to collect the tax from him without giving him a right to dispute the amount. If you don't pay, the amount shall be collected from you as if it were a fine, and you are also liable to a fine which may extend to one thousand rupees. I ask: Is that correct? Is that jurisprudence? How many such cases have really come up before the magistrates, what is the amount of tax involved and what is the fine realized? The amendment to clause (*d*) says, 'Any person who fails to pay within the time allowed, *any tax* demanded from him . . .' The net result is that for your failure to pay the tax to which you might have been assessed, even wrongly, by a Commercial Tax Officer or a Petrol Officer, you must pay a fine of one thousand rupees and you have got to go to prison and the tax shall be recoverable as if it were a fine. Clause (*e*) reads: 'Any person who fraudulently evades the payment of any tax *due under this Act* . . .' and 'the magistrate shall specify in the judgment the amount of the tax . . . .' The words used are 'due under this Act.' Therefore, I contend that the magistrate has still got jurisdiction to determine what the amount of tax is which he has failed or has evaded to pay. While the magistrate has no jurisdiction under clause (*e*) to determine whether the demand is due under the Act or not, how can he specify in the judgment the amount of the tax which the person has failed or evaded to pay? It is a very serious encroachment to convict a person for failure to pay 'any tax' that is demanded. The fundamental point is this. When you give power to the magistrate to convict him, why should you not give him jurisdiction to go into the correctness of the assessment? Is this the way in which we should pass legislation? Is this your Satyagraha? *Agraham* comes first, i.e., a fine of one thousand rupees and putting him in jail. *Satyam*, i.e., determining the correct assessment comes last."

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MR. PRESIDENT :—" Does the hon. Member know the meaning of the word 'Agraham'? It means perseverence and not anger."

SRI B. NARAYANASWAMI NAYUDU :—" I do not know; perhaps 'Agraham' may be called indignation or anger. Whatever it is, the real point is that *Satyam* is divorced from *Satyagraham* and only *Agraham* is maintained. Please determine the amount that is due and then fine him or put him in jail. What is put in is *Duragraha*. Is it jurisprudence? I say, the Magistrate should be given the power to find out whether the tax that is demanded is really the tax that is due."

Clause 2 was put and carried.

Clauses 3 and 1 and the preamble were put and carried.

THE HON. SRI B. GOPALA REDDI :—" I move—

'*that the Bill be passed into law*'."

SRI B. NARAYANASWAMI NAYUDU :—" Sir, the Hon. Minister for Finance must be congratulated on calling this Bill a small Bill, a very innocuous Bill. If you don't pay 'any tax that is demanded', you will be fined only one thousand rupees! If you don't pay that, you will only go to jail. That is all. Really, it is avery innocuous Bill !"

The motion was put and carried.

(6) THE MADRAS CIVIL COURTS (AMENDMENT) BILL, 1948 (L.A. BILL NO. 17 OF 1948)

THE HON. SRI K. MADHAVA MENON :—" Sir, the Bill that I am going to move is also a very small Bill and I am sure it will have the support of even super-critics like Mr. Narayanaswami Nayudu. I move—

'*that the Madras Civil Courts (Amendment) Bill, 1948 (L.A. Bill No. 17 of 1948)* [a] *as passed by the Legislative Assembly be taken into consideration at once.*'

" At present there is no permanent sub-court attached to any of the District Courts in the Ceded districts. Accumulation of work in any of the District Courts is met by the establishment of temporary sub-court for short periods. This procedure is cumbersome, and the High Court has recommended the establishment of a permanent Sub-Judge's Court for the Ceded districts as a whole, it being left to the High Court to determine from time to time in which of the districts and for what periods the court should sit. The object of this Bill is to amend the Madras Civil Courts Act, 1873, so as to permit of the appointment of one Subordinate Judge for two or more districts. The Subordinate Judge will hold his court in each of the districts for such period as may be fixed by the High Court. The court will have no original jurisdiction. It

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[a] Printed as Appendix VI on page 212 infra.